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Supreme Court of the United States

OCTOBER TERM, 1943.

C. E. MOTTAZ, I. C. SMITH, VIRGINIA BEHNKEN,
WILLIAM H. MORGENS, AND CONTINENTAL
COMPANY, A CORPORATION,
PETITIONERS,

VS.

EDWARD L. SCHEUFLE, SUPERINTENDENT OF THE
INSURANCE DEPARTMENT OF THE STATE OF MIS-
SOURI, GUSTAVE J. CRECELIUS, ANNA M. CRECE-
LIUS AND MYRTLE K. CRECELIUS AND KANSAS
CITY LIFE INSURANCE COMPANY, A CORPORATION,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of Missouri and BRIEF IN SUPPORT THEREOF.

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CITY LIFE INSURANCE COMPANY, A CORPORATION,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:

Your petitioners, C. E. Mottaz, I. C. Smith, Virginia Behnken, William H. Morgens, and Continental Company, a Corporation, respectfully show as grounds for the issuance of a writ of certiorari to the Supreme Court of the

State of Missouri, *en banc*, which is the highest court of that state:

This petition seeks a review of the final judgment and decision of the Supreme Court of Missouri which became final on December 6, 1943, in the cases (consolidated and decided in a single opinion) of *Edward L. Scheufler, Superintendent of the Insurance Department of the State of Missouri et al. v. Continental Life Insurance Company, defendant, Gustave J. Crecelius et al., appellants*, No. 38119, and *Edward L. Scheufler, Superintendent of the Insurance Department of the State of Missouri et al. v. Continental Life Insurance Company, defendant, C. E. Mottaz et al., appellants*, No. 38120 (R. 313, 331, 332, 339) 175 S. W. 2d 836 (not yet officially reported), wherein petitioners as stockholders of the Continental Life Insurance Company, a corporation, sought to intervene to make claim to assets of said corporation remaining at the conclusion of liquidation proceedings of said company under the Insurance Code of Missouri.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

This case was a three party controversy over the disposition of a fund of approximately \$100,000. This fund remained in the hands of the Superintendent of the Insurance Department of the State of Missouri (hereafter referred to as Superintendent), after reinsurance of the risks of the dissolved Continental Life Insurance Company had been effected in the course of proceedings instituted by said Superintendent to liquidate, settle and wind up the affairs of said company under the Missouri Insurance Code. The contract of reinsurance executed by the Superintendent (on behalf of the policyholders and others

interested) and by the Kansas City Life Insurance Company (the reinsuring company) expressly excepted a fund of \$225,000 from assets of the dissolved Continental Life Insurance Company conveyed to said reinsuring company to be used to pay the costs of the liquidation proceedings (R. 52, 53). When the costs for the payment of which said fund had been set aside and excepted had been paid, the Superintendent filed application with the circuit court for authority to dispose of the remainder of said fund because it was no longer needed for the purposes for which it was excepted and retained by him (R. 76). Thereupon these petitioners and certain former policyholders sought to intervene in said circuit court and claim the fund (R. 80, 84). The circuit court denied their applications to intervene and awarded the fund to the Kansas City Life Insurance Company (R. 281-282). On appeal to the Missouri Supreme Court, that court did not pass on petitioners' right to intervene but in disregard of the explicit provisions of the code awarded the fund to the Kansas City Life Insurance Company for the benefit of policyholders on the ground that it would be inequitable for the stockholders to receive it (R. 314, 319).

(It may be said in passing that the decision is inequitable because a windfall of the fund results to the Kansas City Life Insurance Company without benefit to the policyholders.)

The Missouri Insurance Code (Secs. 6047-6076, R. S. Mo., 1939, the part deemed relevant being set out, in the appendix to the brief) provides the exclusive method for liquidating and winding up the affairs of insolvent insurance companies. Liquidation proceedings under that Code are commenced by the Superintendent in the appropriate circuit court (Sec. 6052). When that court enters final judgment dissolving the company or declaring it insolvent,

the Superintendent takes title to the assets for the benefit of creditors, policyholders, and *other persons interested* (Sec. 6058, Appendix). Thereafter the Superintendent liquidates the company under the supervision of the court in one of two ways: (a) by sale of its assets, and distribution of the proceeds thereof in accordance with Section 6062 (Appendix) or (b) by reinsurance (Sec. 6064, Appendix). If liquidation is by reinsurance (method b), Section 6062 by its express terms does not apply and Section 6064 provides that such reinsurance shall be made upon the best terms possible for *all persons interested*.

In the cases at bar proceedings were instituted under the Code by the Superintendent, judgment was entered declaring the Continental Company insolvent and ordering it dissolved (R. 47). The Superintendent took title to the company's assets and with the court's approval effected liquidation through a contract of reinsurance with the Kansas City Life Insurance Company, under which the policies of Continental were reinsured (R. 52), and provision made for the payment of specified creditors' claims (R. 57) (there are no claims in this case on behalf of other creditors).

It is the contention of petitioners, stockholders of Continental: (1) that the Missouri Insurance Code is an insolvency law, proceedings under which do not merely stay but extinguish claims; that after the policies were reinsured and the other creditors of the company paid, the claims of all persons interested in the company and its assets, other than petitioners, were satisfied and extinguished; and that the stockholders then constituted the *only interested persons* to whom the fund could belong under the Insurance Code (Sections 6058 and 6064, Appendix); (2) that even if the Missouri Insurance Code is not an insolvency law of such effect, nevertheless, under

that Code: (a) when the Superintendent effected reinsurance he, as representative of the policyholders empowered to bind them, *elected* to forego the policyholders' claims for money and to exchange such claims for new policies in the reinsuring company, the result of which was that the policyholders voluntarily eliminated themselves as creditors of the insolvent company and as members of the class defined by the code as *persons interested* in the fund.

When therefore the Supreme Court of Missouri undertook an equitable disposition of the fund in disregard of the Code provisions it ignored petitioners' rights under the Code and thereby denied them the equal protection of the laws.

The record upon which this petition is presented is composed of the printed abstract of record used in the Supreme Court of Missouri, pages Nos. 1 to 309 of the record as certified to this Court, together with the proceedings in the Supreme Court of Missouri as shown by pages Nos. 310 to 344 as certified to this Court.

BASIS OF THE JURISDICTION OF THIS COURT.

This application is made under the authority of Section 237 of the Judicial Code, as amended (28 U. S. C. A. 344 b), and after petitioners have exhausted appellate review provided by state law. It is contended by petitioners that the State of Missouri acting through its Supreme Court has denied petitioners herein the rights, privileges and immunities provided for them by the Insurance Code of Missouri (Secs. 6047-6076, R. S. Mo., 1939) and more especially Sections 6058 and 6064 of said Code, pertinent sections of which statutes are set out in an Appendix to the brief submitted herewith. The judgment of the Su-

preme Court of Missouri sought to be reviewed became final on December 6, 1943 (R. 339).

Petitioners raised the constitutional question by motions to modify the opinion (R. 325) and for rehearing on the decision and judgment of Division Two of the Missouri Supreme Court (R. 323), which decision and judgment was the first ruling on and denial of the rights of petitioners under the Insurance Code (the ruling in the trial court having been solely on the right of petitioners to intervene in the cause (R. 282)). Said motions to modify and for rehearing were overruled (R. 327). The constitutional question was again raised by petitioners in their motion to transfer the cause from Division Two of the Supreme Court of Missouri to the Court *en banc* (R. 328), which said motion was overruled and the cause was transferred on the court's own motion (R. 330). After the Court *en banc* adopted the opinion of Division Two (R. 331) the petitioners again raised the constitutional question in their motion for rehearing (R. 332). That motion was overruled (R. 339).

QUESTIONS PRESENTED.

Did the Missouri Supreme Court deny petitioners the equal protection of the laws guaranteed to them by the 14th Amendment to the United States Constitution when:

1. It failed to award them as stockholders of an insolvent insurance company the assets of that company left after its policyholders had been reinsured and its other creditors paid when such stockholders constituted the only remaining eligible persons under the insurance code to receive such assets?

2. It failed to construe and determine their rights under the insurance code and resorted to equity, although the insurance code exclusively controls the determination of such rights.

REASONS RELIED ON FOR ISSUANCE OF WRIT.

Petitioners contend that the writ should issue because:

(1) Petitioners asserted title to the fund in dispute basing their claim upon local laws (the Missouri Insurance Code) and said claim under said statutory provisions was ignored by the Supreme Court of Missouri.

(2) The Supreme Court of the United States has jurisdiction to determine whether a state court has denied rights asserted by petitioners under local law.

(3) The constitutional question was raised at the first opportunity after petitioners' rights under local laws were disregarded and denied.

PRAYER.

Wherefore, petitioners respectfully pray that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of Missouri to the end that the judgment of said Supreme Court of Missouri in the causes above named may be reviewed and that upon such review said decision of the Missouri Supreme Court be

reversed, and for such further relief as to this honorable Court may seem proper.

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